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06   UNITED STATES DISTRICT COURT
                              WESTERN DISTRICT OF WASHINGTON
07   AT SEATTLE

08 PROPET USA, INC.,   )   CASE NO. C06-0186-MAT
)
09   Plaintiff,   )
)   ORDER GRANTING PLAINTIFF'S
10   v.   )   MOTION FOR A TEMPORARY
)   PROTECTIVE ORDER
11 LLOYD SHUGART,   )
)
12   Defendant.   )
    _____)

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14   Plaintiff Propet USA, Inc. (hereinafter "Propet") filed a Motion for a Protective Order,

15 requesting that the Court issue an order prohibiting defendant Lloyd Shugart (hereinafter

16 "Shugart") from further contacting Propet's customers pending resolution of the current case.

17 (Dkt. 157.) Propet points to "Infringement Demand Notice[s]" in which Shugart demands that

18 Propet customers discontinue use of his copyright protected images and make payment for

19 copyright infringements, and indicates that he "will take action accordingly[]" if his demands are

20 not met. (Dkt. 158, Exs. A & B.)

21   The Court finds Shugart's actions troubling. Shugart's counterclaims against Propet

22 explicitly asserted infringement through Propet's distribution of his images to third parties. (Dkt.

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01 | 13 at 7-9.) In pre-trial briefing, Shugart calculated his damages with consideration of the lost

02 | royalty associated with distribution of his images to third parties. (Dkt. 113 at 6-7.) At trial,

03 | Shugart's counsel argued: "Part of our dispute on this thing is the film delivery memo says that

04 | Propet USA and only Propet USA can use these images. And these are to show that Propet has

05 | taken these images and distributed to other entities, namely, third parties entirely and its foreign

06 | operations which are different from Propet USA." (Dkt. 147 at 157-58.) Further, although

07 | Shugart provided evidence of copying specific only to a small number of infringements on Propet's

08 | website, he supplemented this testimony with extensive evidence of third party usage of his

09 | images. (*Id.* at 158-64, 167.)

10 | Based on the evidence presented, the jury awarded and Shugart elected a significant

11 | amount of statutory damages for copyright infringement. As reflected in a recent order from this

12 | Court, given the minimal amount of evidence specific to copying by Propet, the evidence of third

13 | party usage may well have supported a finding of willful infringement. (Dkt. 164 at 4-5.) The jury

14 | also found Shugart entitled to a substantial award for Propet's violation of the Digital Millenium

15 | Copyright Act (DMCA), the violation of which presumably took place prior to any distribution

16 | of plaintiff's images to third parties. Indeed, Shugart previously argued that it was Propet's

17 | removal of his copyright management information in violation of the DMCA that enabled Propet

18 | to make distributions to third parties without his consent. (Dkt. 113 at 6.)

19 | Given all of the above, it does appear, as argued by Propet, that the jury awards

20 | compensate Shugart for the injuries sustained in relation to the images associated with this lawsuit

21 | and that Shugart inappropriately seeks additional compensation for those same injuries.

22 | Accordingly, the Court GRANTS Propet's motion for a temporary protective order. Shugart is

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01 directed to cease contact with Propet's customers for the purpose of demanding payments for

02 alleged copyright violations [1] pending the ultimate resolution of the present case and should

03 carefully consider the propriety of later pursuing this course of action. The Clerk is directed to

04 send copies of this Order to counsel for Propet and Shugart.[2]

05   DATED this 20th day of December, 2007.

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07   Mary Alice Theiler
                                           United States Magistrate Judge

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19   [1] This specific language should resolve Shugart's concern that the requested protective
    order is unconstitutionally overbroad. The Court also notes that the parties have been ordered to
20 submit a proposed stipulated order entering a permanent injunction that will serve to identify with
    specificity the images affected by the instant order. (*See* Dkt. 165.)

21   [2] In a Surreply, Shugart seeks to strike portions of Propet's Reply. (Dkt. 163.) However,
    because the contested portions of Propet's Reply were not relevant to the Court's ruling on
22 Propet's motion, it DENIES Shugart's motion to strike.

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